Supreme Court, U.S.
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1998

DAWNELLE BARRIS, *Petitioner*

v

COUNTY OF LOS ANGELES, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the California Supreme Court correctly determine that a claim against a hospital under the federal Emergency Medical Treatment and Active Labor Act (42 U.S.C.A. 1395dd) for failure to stabilize a patient's condition prior to transferring her to another hospital is "based on professional negligence" – where that determination conflicts with the determination of the numerous federal appellate courts which have addressed that question and effectively nullifies EMTALA in California?

LIST OF PARTIES

All parties to the proceeding in the court whose judgment is sought to be reviewed appear in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Dawnelle Barris respectfully prays that a writ of certiorari issue to review the judgement of the Supreme Court of the State of California filed on March 25, 1999, which became final April 24, 1999. The judgment, applying California's cap on noneconomic damages in cases based on a health care provider's professional negligence to the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C.A. 1395dd ("EMTALA"), was directly based on the California Supreme Court's determination that EMTALA is a professional negligence statute. That determination is contrary to the decisions of numerous federal appellate courts, and has the practical effect of nullifying EMTALA in California.

OPINIONS BELOW

The March 25, 1999 decision of the Supreme Court of the State of California in this matter which gives rise to this petition is entitled Dawnelle Barris v. County of Los Angeles (1999) 20 Cal.4th 101, 83 Cal.Rptr. 2d 145, 927 P.2d 966. A copy is reprinted in Appendix A hereto. The judgment of the Superior Court of the State of California for the County of Los Angeles reviewed in that opinion is reprinted in Appendix B. That judgment incorporates the trial court's "Ruling on Defendants' Motion in Limine to Limit Plaintiff's Damages and Recovery Under MICRA, which is reprinted in Appendix C hereto.

JURISDICTION

On March 25, 1999 the Supreme Court of the State of California rendered its decision in Barris v. County of Los Angeles, in which it held that a claim against a hospital under 42 U.S.C.A. §1395dd, the federal Emergency Medical Treatment and Active Labor Act ("EMTALA"), for failure to stabilize a patient suffering from an emergency medical condition prior to transferring that patient to another hospital, is based on professional negligence, and for that reason is subject California's limit on noneconomic damages in cases against health care providers based on professional negligence. The California Supreme Court's determination that EMTALA is a negligence statute conflicts with the findings of numerous federal appellate courts, which have uniformly held that EMTALA is not a negligence statute, and it effectively nullifies EMTALA in California. Thus, the California court of last resort has decided an important federal question in a way that conflicts with the decisions of numerous United States courts of appeals. Accordingly, jurisdiction of this Court to review the decision of the Supreme Court of the State of California is invoked under 28 U.S.C.A. §1257 and Rules of the United States Supreme Court, Rule 10.

STATUTES INVOLVED

This case involves the interpretation of 42 U.S.C.A. §1395dd. California Civil Code §3333.2 is also relevant to the issues herein. Since the provisions involved are lengthy, the pertinent text is set out in Appendix D.

STATEMENT OF THE CASE

A. THE EVENTS LEADING TO THE FILING OF THE LAWSUIT

On May 6, 1993 eighteen month-old Mychelle Williams began vomiting and having severe difficulty breathing, then became limp and non-responsive. Her mother called the paramedics, and Mychelle was taken to Martin Luther King/Drew Medical Center,("MLK")[1], a facility owned and operated by defendant County of Los Angeles, by ambulance. (Reporter's Transcript[2] 1335:9 - 1339:16.) Mychelle was member of the Kaiser Foundation Health Plan, an HMO, but was taken to MLK because it was the nearest medical facility. (R.T. 1339:17-28.)

Upon arrival at MLK at 5:35 p.m., Mychelle had an extremely high temperature of 106.6 degrees, her pulse and her respiratory rate were abnormally fast, and she was lethargic. (RT 912:16-913:25; 1062:8-26.) MLK personnel observed that Mychelle's mother was frantic because of the apparent seriousness of her daughter's condition (RT: 1214:18-22). Upon learning that Mychelle was a Kaiser patient, MLK personnel called Kaiser in order to find out whether Kaiser was willing to pay for Mychelle's treatment at King/Drew. (RT: 1199:17 -1202:12.) This conversation, like the other conversations between MLK and Kaiser regarding Mychelle Williams that night, was tape recorded by Kaiser.

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[1]MLK is owned and operated by respondent County of Los Angeles (COLA).

[2]Hereinafter "R.T."

(RT: 1202:21 - 1202:7; 942:25-943:7.)

The physician who was responsible for Mychelle's care at MLK that evening was defendant Trach Phuong Dang, M.D. (RT: 916:20-23.) Dr. Dang examined Mychelle and noted signs and symptoms which, he testified, were consistent with sepsis, an overwhelming infection that involves multiple parts of the body. (RT: 923:5-15; 924:16-926:15.) Dr. Dang was familiar with sepsis at that time, and he was aware that it was a life-threatening problem that could kill unless treated. (RT: 923:5-15.) He knew that in order to treat sepsis, it is necessary to treat the underlying infection, and that if a patient who has bacterial sepsis does not promptly receive antibiotics, that patient is likely to die. (RT 950:4-25.) Nonetheless, he did not rule out sepsis as a possible cause of Mychelle's symptoms, (RT: 927:14-18) and he never prescribed antibiotics for her. (RT: 1074:6-21.)

To rule out sepsis as a cause of Mychelle's symptoms, Dr. Dang testified that he would have had to do tests that included a complete blood count and blood culture. (RT 927:19-928:1.) Dr. Dang concluded that a complete blood count and blood culture should be done on Mychelle. (RT 928:2-8.) However, Dr. Dang believed that he had to obtain Kaiser's permission before he could provide treatment for Mychelle. (RT 958:12-23.) He called Kaiser and suggested that the blood work be done at MLK, rather than first transferring her to Kaiser. (RT: 929:5-20.) However, the physician he spoke to at Kaiser, Defendant Brian Thompson, M.D., instructed him not to perform those tests, stating that they would be done after Mychelle got to Kaiser. (RT 929:5-20.)

Apparently still concerned about the delay in treatment that would necessarily result from waiting to begin the blood work until Mychelle got to Kaiser, Dr. Dang called Dr. Thompson back, and three more times he suggested starting the blood work at MLK. (RT 973:6-8; 967:1-10.) Each time, Dr. Thompson instructed him not to do the blood work at MLK (968:12-115.) The reason Dr. Dang did not go ahead and begin those tests was that Dr. Thompson — who had never seen Mychelle, either that night or at any other time — had decided the tests were not necessary, and told Dr. Dang not to do them. (RT: 968:19-22.) Until Dr. Thompson told him not to do the lab work, Dr. Dang had intended to do it at MLK. (RT: 977:7-10.)

After Dr. Thompson told him not to do the lab work, Dr. Dang was sufficiently concerned about this that he made two notes about it in his chart: "Talked to Dr. Thompson at Kaiser did not want me to do any blood test" and "Dr. Thompson did not want me to draw blood for lab tests." (RT 981:16-982:17.)

Mychelle's condition continued to deteriorate. At approximately 8:00 p.m. she had a seizure. (RT: 978:7-979:8; 1346:27-1347:10.) She also became increasingly lethargic and non-responsive. (RT: 1175:23-1178:22; 1350:5-21.) Dawnelle was frantic because her daughter's condition was deteriorating, yet nothing was being done to help her. She demanded that something be done to treat Mychelle. COLA's only response was to call security and have Dawnelle escorted from the hospital. (RT: 1348:7-22.)

While Mychelle was in this clearly unstable condition, Dr. Dang wrote the order authorizing her transfer, and she

was transferred to Kaiser by ambulance at 9:00 p.m.. (R.T. 981:16-28.) By the time Mychelle arrived at Kaiser, it was too late. Within fifteen minutes of her arrival, she suffered a cardiac arrest. (RT: 1074:22-1075:3.) Resuscitation efforts were unsuccessful, and she was pronounced dead shortly thereafter. (RT: 1075:1-18.)

After her death, it was confirmed that Mychelle had indeed died of sepsis. (RT: 1075:19-24;1077:7-27;1092:13-1093:4.) If appropriate treatment had been promptly initiated at MLK, she would have recovered. (RT: 1097:16-1100:16; 1107:5-11.)

B. THE JURY'S VERDICT IN FAVOR OF PETITIONER

Dawnelle Barris[3] filed her wrongful death complaint in Los Angles Superior Court on May 2, 1994. It contained two causes of action. The first was a traditional medical negligence claim asserted under California State law against all of the defendants.[4] The second cause of action was brought against COLA only under the federal "anti-dumping" statute, 42 U.S.C.A. 1395dd, entitled the Emergency Medical

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[3]The original plaintiffs were Mychelle's mother, Dawnelle Barris, and Mychelle's father, Michael Williams. Michael Williams dismissed his claim prior to trial.

[4]The defendants were: The County of Los Angeles; T. Dang., M.D.; Kaiser Foundation Hospitals, Inc., a Corporation; Kaiser Foundation Health Plan, Inc., a Corporation; Southern California Permanente Medical Group, a Partnership; and Brian Thompson, M.D.

Treatment and Active Labor Act ("EMTALA.").

A jury trial commenced on November 14, 1995 before the Honorable Victoria M. Chavez, Judge (Appellant's Appendix[5] 173.) The court's instructions to the jury included the following statement:

> . . .In order to determine whether the County of Los Angeles is liable to the plaintiff for violating the stability and transfer provisions of the Emergency Medical Treatment and Active Labor Act, you must find that the County of Los Angeles had actual knowledge that Mychelle Williams had an emergency medical condition which made her unstable at the time she was transferred on May 6th, 1993.
>
> The federal Emergency Medical Treatment and Active Labor Act defines an "emergency medical condition" as follows:
>
> A medical condition manifesting itself by acute symptoms of sufficient severity, . . . that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the health of the individual in serious jeopardy...
>
> The term "to stabilize" means, with respect to an emergency medical condition

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[5]Hereinafter "A.A."

described in the previous jury instruction, to provide such medical treatment of the condition as may be necessary to assure within reasonable medical probability that no material deterioration of the condition is likely to result from or to occur during the transfer of the individual from a facility... (R.T. 1899:13 - 1901:28.)

Upon retiring to deliberate, the jury was provided with a special verdict form. Question 3 on the Special Verdict form asked: "Did the Defendant County of Los Angeles violate the Emergency Medical Treatment and Active Labor Act?" (A.A. 48-50.)

On December 11, 1995, the jury returned its special verdict in favor of plaintiff and appellant on both of her causes of action. It awarded noneconomic damages in the amount of $1,350,000, in addition to funeral and burial expenses of $3,000. (A.A. 50).

In rendering its verdict, the jury's response to Question 3 was "yes." (A.A. 48-50.) Given the trial court's instructions to the jury regarding EMTALA, the jury's response to Question 3 necessarily implies a finding by the jury that at the time Mychelle was transferred from MLK to Kaiser, Dr. Dang had *actual knowledge* that she was then suffering from a medical condition which, in the absence of immediate medical attention, could reasonably be expected to result in placing her health in serious jeopardy, and that he nonetheless transferred her without first providing the treatment necessary to assure, within reasonable medical probability, that no material deterioration of her condition

was likely to result from or to occur during her transfer. Essentially, the jury found that COLA failed to provide Mychelle with adequate treatment for what it *actually knew* was a life-threatening problem because of her status as an HMO patient, and that she died as a result.

C. THE TRIAL COURT'S DECISION

Before trial commenced, COLA had requested a determination by the trial court that the damages recoverable by petitioner in connection with her federal EMTALA claim would be subject to California Civil Code §3333.2, which places a $250,000 limit on the amount of noneconomic damages a plaintiff may recover in "any action for injury against a health care provider based on professional negligence." In opposing COLA's motion, Appellant pointed out that the numerous federal courts which have interpreted EMTALA have clearly established that EMTALA is not a professional negligence statute, and that EMTALA was intended by Congress to provide a remedy in addition to that afforded by state common law negligence actions.

The trial court deferred consideration of COLA's motions until the completion of trial. The issues were extensively briefed (A.A. 28-47; 51-168) and argued. (R.T. 2120 13-2138:27). On March 22, 1996, the court issued its "Ruling on Defendants' Motion in Limine to Limit Plaintiff's Damages and Recovery Under MICRA", reducing the non-economic damages awarded to petitioner by the jury in connection with her federal EMTALA claim from $1,350,000 to $250,000 based on California's limitation on noneconomic damages applicable to actions against a health care provider "based on professional negligence". (A.A. 169, Appendix C.)

The judgment in favor of petitioner was entered on June 20, 1996, (A.A. 177, Appendix B.)

D. THE APPEAL

On July 19, 1996, Plaintiff filed a notice of appeal to California's Second District Court of Appeal, from "that portion of the judgment wherein the trial court reduced the amount of non-economic damages awarded to petitioner by the jury in connection with her Second Cause of Action against defendant County of Los Angeles for violation of 42 U.S.C. 1395dd from $1,350,000 to $250,000." (A.A. 180.)[6] While the appeal was pending, two United States District

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[6]COLA cross-appealed on July 23, 1996 (A.A. 182-183), contending that the evidence had been insufficient to support Appellant's EMTALA claim. In its brief, it informed the appellate court that:

> "The County does not challenge the judgment against it for negligence. As a practical matter, if the MICRA caps apply to an EMTALA cause of action, additional liability for an EMTALA violation does not significantly increase the County's exposure. The County has cross-appealed to contest the judgment in favor of plaintiff on her EMTALA cause of action to protect against any determination that the MICRA caps do not apply. If this court determines that the caps do apply, it need not address the County's cross-appeal based on substantial evidence."

(Combined Respondent's Brief and Cross-Appellant's Opening Brief, p. 3, n.1.)

Court cases in the Northern District of California had occasion to address the same issue presented in the present case in the context of ruling on motions for summary judgment. In Jackson v. East Bay Hospital (1997) 980 F. Supp. 341, after an extensive review of the nature and extent of EMTALA's incorporation of state law damages, the Northern District of California court held that California Civil Code §3333.2's cap on noneconomic damages does *not* apply to claims brought under EMTALA. Another California federal district court addressed the same issue, and reached the same conclusion, in Burrows v. Redbud Community Hospital District (N.D.Cal. 1997) No. C-96-4345 SI. Nonetheless, California's Second Appellate District affirmed the trial court's application of Civil Code §3333.2's damages cap to Petitioner's EMTALA claim, and denied Petitioner's request for a rehearing.

The Supreme Court of the State of California granted review, and on March 25, 1999 it filed its opinion in Barris v. County of Los Angeles (1999) 20 Cal.4th 101, 83 Cal.Rptr. 2d 145, 927 P.2d 966 (*See* Appendix A.) In that opinion, the California Supreme Court specifically found that petitioner's EMTALA claim was "based on professional negligence." Appendix A at p.2 and p.16. It stated that:

> "A claim under EMTALA for failure to stabilize is thus necessarily "based on professional negligence" within the meaning of [California Civil Code Section 3333.2] – it involves "a negligent . . . omission to act by a health care provider in the rendering of professional services (Civ. Code, §3333.2, subds. (a),(c)(2).)

Appendix A, p 10.
It also stated that:

> [A]n EMTALA claim based on failure to provide medically reasonable treatment to stabilize a patient would, if brought under state law, constitute a claim of "professional negligence" as defined by Civil Code §3333.2. . . . The trier of fact must, under EMTALA as in a medical negligence claim, consider the prevailing medical standards and relevant expert medical testimony to determine whether material deterioration of the patient's condition was reasonably likely to occur."

Appendix A, p. 16.

The California Supreme Court expressly rejected the holding of the federal district court in Jackson v. East Bay Hospital (N.D.Cal. 1997) 980 F. Supp. 1341. Appendix A, p. 17. Jackson also addressed the question of whether California's limit on noneconomic damages in cases against a health care provider based on professional negligence applied to an EMTALA claim, and found that it did not. The California Supreme Court stated that it found the holding "unpersuasive." Appendix A, p. 17. It specifically rejected the contention that EMTALA is a "strict liability" statute (Appendix A, p. 17) – although numerous federal courts have held that it is.

REASONS FOR GRANTING THE WRIT

1. THE CALIFORNIA SUPREME COURT INCORRECTLY INTERPRETED A FEDERAL STATUTE IN DETERMINING THAT A CLAIM AGAINST A HOSPITAL UNDER EMTALA FOR

FAILURE TO STABILIZE A PATIENT'S EMERGENCY MEDICAL CONDITION PRIOR TO TRANSFERRING HER TO ANOTHER HOSPITAL IS EQUIVALENT TO A PROFESSIONAL NEGLIGENCE CLAIM UNDER CALIFORNIA LAW.

At the time of trial of this matter, Respondent sought a determination that the California statute which limits the amount of noneconomic damages a plaintiff may recover in an "action for injury against a health care provider based on professional negligence," Civil Code §3333.2 (*see* Appendix D) applies to petitioner's EMTALA claim. Petitioner pointed out that it is well-established that EMTALA is not a negligence statute, and that Civil Code §3333.2 applies only to cases against a health care provider "based on professional *negligence*," which is defined within Civil Code §3333.2 as "a *negligent* act or omission to act by a health care provider in the rendering of professional services . . ." Nonetheless, the trial court held that §3333.2 applies to Petitioner's EMTALA claim.(*See* Appendices B and C.)

Respondents argued both that Civil Code §3333.2 should be interpreted as applying to non-negligence cases as well as negligence cases, and that EMTALA should be interpreted as an "action for injury against a health care provider based on professional negligence." The California Supreme Court squarely rejected the former contention: "[W]e need not, and do not, adopt the County's suggestion that the scope of MICRA should be viewed expansively as necessarily limiting all awards of noneconomic damages against a hospital for violations of EMTALA, including claims that do not involve conduct constituting "professional

negligence." Appendix A, p. 20.

Thus, the California Supreme court's finding that Civil Code § 3333.2 is applicable to Petitioner's EMTALA claim is based, not on its interpretation of any California statute, but on its interpretation of the federal EMTALA statute as "based on professional negligence."

However, the numerous federal courts construing EMTALA have uniformly emphasized that it is not to be confused with a medical negligence statute, and the conduct it prohibits is not medical negligence. As the court stated in Cooper v. Gulf Breeze Hosp., Inc. (1993) 839 F.Supp.1538:

> EMTALA was not intended to create a new federal cause of action for medical malpractice. Instead, the statute provides a cause of action for two narrowly-defined situations when a hospital has "dumped" a patient. The EMTALA and state medical malpractice laws provide distinct remedies for different wrongs...
> ...Malpractice actions are based on negligence and seek to compensate victims for injuries suffered when health care providers breach the applicable standard of care... EMTALA targets the evil of "patient dumping" and is not based on fault. EMTALA narrowly defines the sanctionable conduct and holds hospitals alone liable. Thus, EMTALA and malpractice actions focus on different conduct and seek different goals.

Id. at p. 1542-1543.

Every federal appellate court which has considered the issue has concluded that an EMTALA claim is *not* equivalent to a state "malpractice" or "professional negligence" claim. Ivette Correa v. Hospital San Francisco (1st Cir. 1995) 69 F.3d 1184 at p.1192 ("EMTALA does not create a cause of action for medical malpractice"); Vickers v. Nash General Hospital, Inc. (4th Cir. 1996) 78 F.3d 139, 142; Power v. Arlington Hosp. Ass'n. (4th Cir. 1994) 42 F.3d 851 at p. 856 ("EMTALA is not a substitute for state law malpractice actions, and was not intended to guarantee proper care or to provide a federal remedy for misdiagnosis or medical negligence"); Marshall v. East Carroll Parish Hospital (5th Cir. 1998) 134 F.3d 319 at p. 322 ("We agree with the other courts which have interpreted EMTALA that the statute was not intended to be used as a federal malpractice statute, but instead was enacted to prevent 'patient dumping', which is the practice of refusing to treat patients who are unable to pay"); Cleland v. Bronson Health Care Group, Inc. (6th Cir. 1990) 917 F.2d 266, 268, 272 ("We believe that the terms of the statute . . . preclude[] resort to a malpractice or other objective standard of care"); Summers v. Baptist Medical Center of Arkadelphia (8th Cir. 1996) 91 F.3d 1132, 1136-37; Eberhardt v. City of Los Angeles (9th Cir. 1995) 62 F.3d 1253, 1255 at p. 1258 ("The statutory language of the EMTALA clearly declines to impose on hospitals a national standard of care . . . the legislative history shows that Congress enacted the EMTALA not to improve the overall standard of medical care, but to ensure that hospitals do not refuse essential emergency care because of a patient's inability to pay"); Urban v. King (10th Cir. 1994) 43 F.3d 523 at p. 525 ("The Emergency Medical Treatment & Active Labor Act is neither a malpractice nor a negligence statute"); Holcomb v. Monahan (11th Cir. 1994)

30 F.3d 116 at p. 117 & n.2 (EMTALA "is not designed to redress a negligent diagnosis by the hospital; no federal malpractice claims are created"); Gatewood v. Washington Healthcare Corp. (D.C. Cir.1991) 933 F.2d 1037 at p.1041 ("The federal Emergency Act is not intended to duplicate preexisting legal protections, but rather to create a new cause of action, generally unavailable under state tort law); Brooks v. Maryland General Hospital, Inc. (1993) 996 F.2d 708 at p.710 ("The Act was not designed to provide a federal remedy for misdiagnosis or general malpractice").

Similar results have been reached by other federal courts. Hines v. Adair County Public Hosp. Dist Corp. (1993) 827 F. Supp. 426 at p. 431 (In enacting EMTALA, "Congress did not intend to create a federal tort of negligence or to require the application of a negligence standard . . . as an alternative to state medical malpractice claims"); Lane v. Calhoun-Liberty County Hosp. Ass'n., Inc. (1994) 846 F. Supp. 1543 at pp. 1550-51 (The term "appropriate" as used in §1395(a) and (b) does not "serve as a vehicle to import state malpractice law into the EMTALA . . . [T]he 'patient dumping' provisions of the statute were not intended to supplant state medical malpractice remedies. Rather, the EMTALA and state medical malpractice laws provide distinct remedies for different wrongs"); Fisher v. New York Health & Hospitals (E.D.N.Y. 1998) ("EMTALA is not a federal medical malpractice statute"); Kenning v. St Paul Fire & Marine Insurance Co. (W.D.Ark. 1997) 990 F. Supp.1104 ("Whether [the emergency room physician's] determination was medically correct, or whether [she] was negligent in her diagnosis is not an issue to be determined under EMTALA. EMTALA is not concerned with the standard of care or with a misdiagnosis . . ."); Stewart v. Myrick (D.Kan.1990) 731

F.Supp. 433 at p. 436 (This "case represents a traditional claim for medical malpractice. It does not represent a case of patient dumping, in which the plaintiff was turned away from medical care for economic reasons. As a result, the case does not present the kind of evil that Congress sought to eliminate in the Act . . ."); Evitt v. Univ. Heights Hospital (S.D.Ind. 1989) ("Underlying plaintiff's reading [of EMTALA] is her implicit complaint that she was misdiagnosed . . . Claims regarding diagnosis and treatment lie in the area of medical malpractice, an area traditionally regulated by state law").

Indeed, many courts interpreting EMTALA have expressly stated that EMTALA is a strict liability statute. See, e.g. Abercrombie v. Osteopathic Hosp. Founders Ass'n (1991) 950 F.2d 676 at p. 681 (The requirements of EMTALA "impose a 'strict liability' on a hospital which violates those requirements"); Stevison by Collins v. Enid Health Systems (1990) 920 F.2d 710 at p.713 ("We construe this statute as imposing a strict liability standard to those defenses available in the act"); Reid v. Indianapolis Osteopathic Medical Hospital, (1989) 709 F.Supp.853 at p.855 (referring to "the strict liability standards of the federal statute"); Jackson v. East Bay Hospital (N.D.Cal.1997)980 F. Supp. 341 . Nonetheless, without mentioning any of these federal decisions, other than Jackson, the California Supreme Court found to the contrary, simply stating that EMTALA "is not a strict liability statute."

The California Supreme Court has thus interpreted the federal EMTALA statute in a manner which is directly contrary to the numerous federal courts, including nine federal appellate courts, which have discussed whether EMTALA is the equivalent of a state malpractice claim. Certiori should be granted to correct this discrepancy in the

interpretation of a federal statute.

2. THE CALIFORNIA SUPREME COURT'S DECISION IN THIS CASE EFFECTIVELY NULLIFIES THE FEDERAL EMTALA STATUTE IN CALIFORNIA.

The California Supreme Court has interpreted an EMTALA failure to stabilize claim as essentially the same as a medical malpractice claim, with one added element:

> EMTALA differs from a traditional state medical malpractice claim principally because it also requires actual knowledge by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as can be provided within the staff and facilities available at the hospital."

(Appendix A, at p.10.)

Thus, it is apparent that, as interpreted by the California Supreme Court, an EMTALA failure to stabilize claim can never be established in the absence of a valid medical negligence claim. If a plaintiff does assert an EMTALA claim and proves medical negligence plus the additional element the California Supreme Court has indicated is necessary, he or she is entitled to no additional or different relief than is obtainable in connection with the medical negligence claim. Thus, there can never be any reason to bring an EMTALA failure to stabilize claim in California.

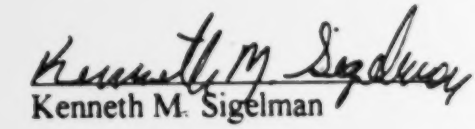
One of the purposes of EMTALA was to deter a specific type of conduct. The necessity for continuing to deter such conduct in California is amply demonstrated by the present case. Unfortunately, the California Supreme Court's interpretation of EMTALA effectively eliminates the deterrent effect which was the objective of the federal statute.

CONCLUSION

The California Supreme Court has interpreted a federal statute in a way that conflicts with the decisions of numerous United States Courts of Appeals. By doing so, it has effectively eliminated any incentive to bring a cause of action under the federal statute, and thereby eliminated the statute's intended deterrent effect. Thus, in accordance with United States Supreme Court Rules, Rule 10, granting this petition for a writ of certiori is appropriate because California's court of last resort has decided an important federal question in a way that conflicts with the decision of a United States Court of Appeals.

Dated: June 22, 1999

Respectfully submitted,



Kenneth M. Sigelman

APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

DAWNELLE BARRIS,	)	S067733
	)	
Plaintiff and Appellant	)	Ct.App. 2/4 No.
v.	)	B105116
COUNTY OF LOS ANGELES	)	Los Angeles Super. Ct.
	)	No. TC007065
Defendant and Appellant.	)	
	)	

In this matter, a hospital operated by the County of Los Angeles (hereafter the County) transferred Mychelle Williams to another hospital without providing treatment required to stabilize her emergency medical condition, in violation of section 1395dd of title 42 of the United States Code, the Emergency Medical Treatment and Active Labor Act (EMTALA). She died shortly thereafter. Dawnelle Barris, Mychelle's mother, was awarded damages for the EMTALA violation, including $1.35 million in noneconomic damages.

We granted review to address the question whether the award was subject to the $250,000 limit on noneconomic damages under Civil Code section 3333.2, which applies to causes of action "based on professional negligence." The answer is affirmative. The EMTALA claim for failure to

= See Concurring Opinion=

"stabilize" Mychelle's emergency medical condition, i.e., "to provide such medical treatment of the condition as may be necessary to assure, within reasonable probability, that no material deterioration of the condition is likely to result from or occur during the transfer" (42 U.S.C. § 1395dd(e)(3)(A)), was "based on professional negligence." Accordingly, we affirm the judgment of the Court of Appeal, which arrived at the same conclusion.

I

On May 6, 1993, at approximately 5:30 p.m., Dawnelle Barris (hereafter Barris) brought her 18-month old daughter, Mychelle Williams, to the emergency room at Martin Luther King/Drew Medical Center (hereafter King/Drew) by ambulance. Mychelle was a member of the Kaiser Foundation Health Plan (hereafter Kaiser), but was taken to King/Drew because it was the nearest emergency medical facility. She had suffered episodes of vomiting and diarrhea, was lethargic, and was having difficulty breathing. Her temperature was 106.6 degrees, her pulse and respiratory rate were abnormally fast, she had abnormally low pulse oxygenation, and she had infections of the middle ear in both ears.

Mychelle was transferred to the pediatric emergency room, and examined by Dr. Trach Phoung Dang. He believed her fever might be caused by bacteria in the bloodstream. He noted signs and symptoms consistent with sepsis, a life-threatening bacterial infection that he knew requires prompt treatment with antibiotics. Nonetheless, he did not rule out sepsis or begin antibiotic treatment. Although he concluded that a complete blood culture, which could have detected sepsis, should be done, he did not order it because he believed that he had to obtain authorization from Kaiser. Kaiser had developed a program called the Emergency

Prospective Review Program (EPRP) to deal with situations where a Kaiser member is brought to a non-Kaiser facility for emergency medical care. Its purpose was to facilitate the transfer of such patients to a Kaiser facility.

On the night of May 6, Brian Thompson, a Kaiser physician, was handling phone calls that came in under the EPRP. At approximately 7 p.m., Dr. Dang spoke by telephone to Dr. Thompson to arrange for possible transfer of Mychelle. Dr. Dang discussed her condition and indicated that he thought blood tests, which would rule out a bacterial infection in the blood, should be performed at King/Drew. Dr. Thompson instructed him not to perform the tests, saying that the blood work would be done at Kaiser. Apparently still concerned about the delay in treatment, Dr. Dang telephoned Dr. Thompson again, and repeatedly suggested starting the blood work at King/Drew. Again, Dr. Thompson instructed Dr. Dang not to do so. Dr. Dang noted in his chart that "Dr. Thompson at Kaiser did not want me to do any blood test."

At approximately 8 p.m., Mychelle suffered a seizure. She became increasingly lethargic and nonresponsive. Dr. Dang treated her symptoms of fever, dehydration, breathing difficult, and seizure, but did not administer antibiotics.

Shortly after 9 p.m., Mychelle was transferred by ambulance to Kaiser. At 9:50 p.m., within 15 minutes of her arrival, Mychelle suffered a cardiac arrest and was pronounced dead shortly thereafter. A blood culture performed as part of an autopsy was positive for streptococcus bacteria, which is readily treatable by antibiotics. The death certificate listed cardiac respiratory arrest caused by septicemia, or sepsis, that had been present for 10 hours.

Barris brought an action for professional negligence

against the County, Kaiser, and Drs. Dang and Thompson, and an action for violation of EMTALA against the County. The EMTALA claim alleged failure to provide appropriate medical screening of Mychelle and failure to stabilize her emergency medical condition before transferring her to Kaiser.

On November 14, 1995, a jury trial began. Dr. Dang testified that he knew sepsis was a possible cause of Mychelle's fever. He explained that blood work, which would rule out a bacterial infection in the blood, was not done at King/Drew because Dr. Thompson said that it would be done at Kaiser. He also testified that he did not believe Mychelle had sepsis and thought that she was stable at the time she was transferred.

An expert for Barris opined, based on review of the medical record and Dr. Dang's testimony, that Dr. Dang actually believed or suspected that Mychelle was suffering from sepsis. According to the expert, the standard of care required that antibiotics be administered to Mychelle for possible sepsis and that she be given treatment for her abnormal respiratory status. Dr. Dang failed to meet the standard of care by failing to place Mychelle on intravenous antibiotics or to stabilize her respiratory status. At the time of her transfer, Mychelle was unstable. There was a high risk, i.e., a reasonable medical probability, that her condition would deteriorate if she were transferred. Another expert agreed that "the information obtained to that point had to lead one to the conclusion that she was not stable for transfer, and that the likelihood of there being a significant deterioration during that period of time was very real."

The County moved for a nonsuit as to the medical screening and failure to stabilize claims under EMTALA. The superior court granted the County's motion for a nonsuit

as to the medical screening claim only, concluding that Barris presented evidence sufficient for the jury to conclude that Mychelle was treated for an emergency medical condition and was not stable for transfer when she was taken to Kaiser.

The jury returned a special verdict in favor of Barris both on the professional negligence cause of action and the failure to stabilize claim under EMTALA. It awarded noneconomic damages in the amount of $1.35 million, in addition to funeral expenses of $3,000.

The superior court ruled that the cap on noneconomic damages under Civil Code section 3333.2 applied to the EMTALA claim as well as the professional negligence action. It reduced the award of noneconomic damages to $250,000.

Barris appealed the superior court's application of Civil Code section 3333.2, but did not appeal the nonsuit on the screening claim under EMTALA. The County cross-appealed, contending that the jury's finding of a violation under EMTALA for failure to stabilize was not supported by the evidence. It conceded, however, that the Court of Appeal need not address the cross-appeal if it determined that the damages cap under Civil Code section 3333.2 applied to the EMTALA claim.

The Court of Appeal affirmed, concluding that the cap on noneconomic damages under Civil Code section 3333.2 applied to the EMTALA claim. Relying on *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 191-192 (hereafter *Central Pathology*), it determined that Civil Code section 3333.2 applies broadly to any cause of action against a health care provider that is "directly related" to the professional services provided. It cited, as persuasive authority, the Fourth Circuit's decision in *Power v. Arlington Hosp. Ass'n* (4th Cir. 1994) 42 F.3d 851 (hereafter *Power*), which applied Virginia's $1 million cap on

medical malpractice awards to EMTALA claims. It did not reach the question whether substantial evidence supported the jury's finding of an EMTALA violation.

We granted review. We now affirm the judgment.

II

We begin with an overview of the two provisions at issue here, Civil Code section 3333.2, and section 1395dd of title 42 of the United States Code.

Civil Code section 3333.2 was enacted as part of the 1975 Medical Injury Compensation Reform Act (MICRA), to reduce the costs of liability insurance for health care providers. It limits damage awards in professional negligence actions against health care providers, requiring that "[i]n any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage." (*Id.*, subd. (a).) It further provides that "[i]n no such action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars ($250,000.)" (*Id.*, subd. (b).) It defines the term "professional negligence" to mean "a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such service are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." (*Id.*, subd. (c)(2).) Thus, at a minimum, it applies to traditional malpractice claims against health care providers, based on failure to meet the applicable standard of care in providing professional services. (*Hedlund v. Superior Court* (1983) 34

Cal.3d 695, 701-703.)[1]

EMTALA was enacted as part of the Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA). It provides that hospitals that have entered into Medicare provider agreements are prohibited from inappropriately transferring or refusing to provide medical care to "any individual" with an emergency medical condition. (42 U.S.C. § 1395dd.)[2]

Under EMTALA, hospitals with emergency departments have two obligations. First, if any individual comes to the emergency department requesting examination or treatment, a hospital must provide for "an appropriate

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[1] "The standard of care in a medical malpractice case requires that medical service providers exercise that degree of skill, knowledge and care ordinarily possessed and exercised by members of their profession under similar circumstances. The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action . . . ." (*Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215.)

[2] Although EMTALA was passed in response to concern by the Congress that hospitals were engaging in "patient dumping" - i.e., refusing medical treatment or transferring indigent and uninsured patients from private to public hospitals to avoid the costs of treatment - it applies to all patients seeking emergency treatment, without regard to ability to pay or insurance. (See *Thornton v. Southwest Detroit Hosp.* (6th Cir. 1990) 895 F.2d 1131, 1134; *Deberry v. Sherman Hospital Assn.* (N.D.Ill. 1990) 741 F.Supp. 1302, 1306.)

medical screening examination within the capability of the hospital's emergency department." (42 U.S.C. § 1395dd(a).) Second, if the hospital "determines that the individual has an emergency medical condition," it must provide "within the staff and facilities available at the hospital" for "such treatment as may be required to stabilize the medical condition" and may not transfer such a patient until the condition is stabilized or other statutory criteria are fulfilled. (*Id.*, § 1395dd(b) & (c)).[3]

EMTALA defines the term "emergency medical condition" as meaning "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in . . . [¶] . . . placing the health of the individual . . . in serious jeopardy, [¶] . . . serious impairment to bodily functions, or [¶] . . . serious dysfunction of any bodily organ or part." (42 U.S.C. § 1395dd(e)(1)(A).) It defines "to stabilize" as meaning "to provide such medical treatment of the condition as may be

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[3] Specifically, the hospital may not transfer such a patient unless "the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations . . . and the risks of transfer, in writing requests transfer to another medical facility," the physician has signed a certification that "based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual . . ." and the transfer is "an appropriate transfer" to that facility." (42 U.S.C. § 1395dd(c)(1).) The County did not purport to follow the special transfer rules under this subsection.

necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from the facility. . . ." (42 U.S.C. § 1395dd(e)(3)(A).)

An individual who "suffers personal harm as a direct result" of a hospital's failure to meet the requirements under EMTALA may bring a civil action seeking damages and appropriate equitable relief against the participating hospital. (42 U.S.C. § 1395dd(d)(2)(A).

As pertinent here, the elements of a civil claim for failure to stabilize include the following: (1) the hospital had actual knowledge that a patient was suffering from an "emergency medical condition"; and (2) did not, within the staff and facilities available at the hospital, provide for necessary stabilizing treatment before transfer or discharge, i.e., the transfer or discharge was not medically reasonable under the circumstances; and (3) the patient suffered personal harm as a direct result.

In stabilizing a patient, a hospital must, within the staff and facilities available to it, meet requirements that relate to the prevailing standard of professional care: it must give the treatment medically necessary to stabilize a patient and it may not discharge or transfer the patient unless it provides "treatment that medical experts agree would prevent the threatening and severe consequences of [the patient's emergency medical condition] while [he or] she was in transit." (*Burditt v. U.S. Dept. of Health and Human Services* (5th Cir. 1991) 934 F.2d 1362, 1369; see also *id.* at p. 1370, fn. 8 [Noting that "Congress only mandates treatment 'within the staff and facilities available at the hospital.' "].) A plaintiff is not required to establish that failure to provide such treatment was based on an improper motive, such as racial discrimination or financial

considerations about payment or reimbursement. As the United States Supreme Court explained in *Roberts v. Galen of Virginia, Inc.* (1999) __ U.S. __ [19 S.Ct. 685, 687]: "[42 U.S.C. section] 13955dd(b) contains no express or implied 'improper motive' requirement."

A claim under EMTALA for failure to stabilize is thus necessarily "based on professional negligence" within the meaning of MICRA - it involves "a negligent . . . omission to act by a health care provider in the rendering of professional services" (Civ. Code, § 3333.2, subds. (a), (c)(2).) - although it requires more. Proof of professional negligence does not suffice as proof of a violation of EMTALA. EMTALA differs from a traditional state medical malpractice claim principally because it also requires *actual knowledge* by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as can be *provided within the staff and facilities available at the hospital*. EMTALA thus imposes liability for failure to stabilize a patient only if a emergency medical condition is actually discovered, rather than for negligent failure to discover and treat such a condition. In addition, EMTALA imposes only a limited duty of medical treatment: a hospital need provide only sufficient care, within its capability, to stabilize the patient, not necessarily to improve or cure his or her condition. Once the medical condition is stabilized, the hospital may discharge or transfer the patient without limitation.[4]

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[4] Although a hospital's actual knowledge of an emergency medical condition will generally be based on the "appropriate medical screening examination" required by section 1395dd(a), most federal courts have concluded that EMTALA requires only that the hospital provide *uniform*

Congress expressly provided that state law provisions limiting the recovery of damages are applicable to EMTALA claims: "Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement [under EMTALA] may, in a civil action against ut participating hospital, obtain *those damages available for personal injury under the law of the State in which the hospital is located*, and such equitable relief as is

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medical screening to all patients who come to the emergency department. (See, e.g., *Gatewood v. Washington Healthcare Corp.* (D.C. Cir. 1991) 933 F.2d 1037, 1041 ["[A] hospital fulfills the 'appropriate medical screening' requirement when it conforms its treatment of a particular patient to its standard screening procedures."]; *Baber v. Hospital Corp. of America* (4th Cir. 1992) 977 F.2d 872, 879-880 [EMTALA "establishes a standard which will of necessity be individualized for each hospital, since hospital emergency departments have varying capabilities."]; *Roberts v. Galen of Virginia, Inc., supra,* __ U.S. at p. __ [119 S.Ct. at p. 687 & fn. 1] [noting that some federal courts have required an "improper motive" in medical screening claims, ut "express[ing] no opinion" on the question].) For this reason many federal courts have observed that a medical screening claim under EMTALA is not a substitute for state malpractice actions, although "there may arise some areas of overlap between federal and local causes of action." (*Gatewood v. Washington Healthcare Corp., supra,* 933 F.2d at p. 1041; see also, e.g., *Holcomb v. Monahan* (11th Cir. 1994) 30 F.3d 116, 117.) Because Barris's medical screening claim was dismissed, we express no opinion on the question whether such a claim would be subject to limitations on damages under MICRA.

appropriate." (42 U.S.C. § 1395dd(d)(2)(A), italics added.)[5]

III

We turn now to the specific question before us: whether damages under EMTALA in a claim based on failure to stabilize are subject to the cap on noneconomic damages under Civil Code section 3333.2.[6]

As discussed, EMTALA expressly incorporates state substantive limits on "damages available for personal injury" (42 U.S.C. § 1395dd(d)(2)(A).) Like the Fourth Circuit in *Power*, we are persuaded that Congress's choice of the term "personal injury" was intended to be inclusive, i.e., to incorporate not only any *general* provisions for personal

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[5]EMTALA also provides for civil money penalties. A participating hospital is subject to a penalty of not more than $50,000 - or $25,000 in the case of hospitals with fewer than 100 beds (42 U.S.C. § 1395dd(d)(1)(A)), it may also be terminated from Medicare participation for EMTALA violations (*id.*, § 1395cc(b)(2)(A)). Physicians are subject to a penalty of not more than $50,000 for each violation of EMTALA (*id.*, § 1395dd(d)(1)) and may also be barred from participation in Medicare (*id.*, § 1395dd(d)(1)(B)(ii).)

[6] Like the Court of Appeal, we accept as true the jury's findings of fact. As the record indicates, it found that the County violated EMTALA by failing to stabilize Mychelle before transferring her to Kaiser, i.e., that Dr. Dang actually determined that she was suffering from an emergency medical condition and failed to provide medical treatment necessary to assure, within reasonable medical probability, that no material deterioration of the condition would result from or occur during transfer to Kaiser. The jury apparently rejected Dr. Dang's testimony on these disputed points.

injury damages, but also any *specific* provisions, such as limits applicable to malpractice damages. (*Power*, supra, 42 F.3d at p. 862 [Construing 42 U.S.C. § 1385dd(d)(2)(A) "as reflecting Congress' deliberate choice of the more inclusive phrase 'personal injury' so that it would not be necessary to delineate each and every type of limitation on damages . . . that the states might have enacted."].) Congress was not required to refer specifically to malpractice damages caps or limitations on noneconomic damages, or to use other explicitly limiting language in order to incorporate such limits. (42 F.2d at p. 862.)

We discern no conflict between the purposes of providing for a private right damages for violations of EMTALA and state law limits on malpractice damages. "[T]he ends of both the federal and state statutes are to keep medical care accessible." (*Jackson v. East Bay Hosp.* (N.D.Cal. 1997) 980 F.Supp. 1341, 1347.) Indeed, the apparent intent of Congress was to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what limits are appropriate in personal injury actions against health care providers. Thus, the legislative history suggests that in drafting EMTALA to incorporate state law limits on personal injury damages, Congress was specifically responding to concern "regarding 'the potential impact of these enforcement provisions on the current medical malpractice crisis.' " (*Power*, supra, 42 F.3d at p. 862, quoting H.R.Rep. No. 99-241, 1st Sess., pt. 3, at p. 6 (1986).) "Congress apparently wished to preserve state-enacted ceilings on the amount of damages that could be recovered in EMTALA . . . ." (42 F.3d at p. 862.) Most federal courts that have addressed the point have applied particular state caps on malpractice damages to EMTALA claims. Thus, in *Power*, the Fourth Circuit

determined that a claim under EMTALA based on failure to provide appropriate medical screening was subject to its cap of $1 million on damages for medical malpractice claims. (*Power*, supra, 42 F.3d at pp. 861-863; see also *Reid v. Indianapolis Osteopathic Medical Hosp.* (S.D.Ind. 1989) 709 F.Supp. 853, 855-856 [holding that an award under EMTALA was subject to Indiana's substantive limitation on the maximum amount recoverable for personal injury from a health care provider]; *Diaz v. CCHC-Golden Glades Ltd.* (Fla.Dist.Ct.App. 1997) 696 So.2d 1346, 1347 [Holding that EMTALA "incorporates all the vagaries of the state medical malpractice law in determination of the damages recoverable in an action under the Act."]; but see *Jackson v. East Bay Hosp., supra*, 980 F.Supp. 1341 [holding that MICRA limit on noneconomic damages does not apply to EMTALA claim]; c.f. *Cooper v. Gulf Breeze Hosp., Inc.* (N.D.Fla. 1993) 839 F.Supp. 1538 [patient was not required to comply with Florida's presuit procedural requirements for medical malpractice actions to maintain a suit under EMTALA].)[7]

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[7]*Cooper* explains that Florida's statute conditions damages caps on the pre-suit procedures followed by the parties to an action for malpractice: "For example, Florida's medical malpractice statute allows either a potential plaintiff or defendant to offer to arbitrate the amount of damages in a malpractice action rather than have this issue go to trial. [Citation.] If the potential plaintiff refuses to arbitrate, then their recovery for noneconomic damages at trial is capped at $350,000 per incident of malpractice." (*Cooper v. Gulf Breeze Hosp., Inc., supra*, 839 F.Supp. at pp. 1541-1542, fn. 5.) Although *Cooper* was decided before *Power*, it would appear that its result is also consistent with the holding therein that EMTALA preempts state *procedural* restrictions

In determining whether a particular state's damages cap applies to an EMTALA violation, federal courts have looked at the underlying conduct challenged and its legal basis to determine whether, *if brought under state law*, it would constitute a cause of action subject to the cap. Thus, in *Power*, the Fourth Circuit determined that although the plaintiff alleged disparate treatment, not a breach of the standard of care associated with a traditional medical malpractice claim, damages for the EMTALA violation would nonetheless be subject to Virginia's $1 million cap on malpractice damages because the cap applies broadly to " 'any tort based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.' " (*Power*, supra, 42 F.3d at p. 861, citing Va. Code Ann., §§ 8.01-581.15, 8.01-58.1 (Michie Supp. 1993).) *Power* stressed that, as interpreted by Virginia courts, the cap on malpractice damages had not been limited to "traditional medical malpractice claims arising from breaches of the professional standard of care," but also applied to claims of battery and sexual misconduct by a physician. (42 F.3d at p. 861.)

We find the analytical approach of the Fourth Circuit on this point persuasive. Accordingly, the issue here is whether a claim under EMTALA based on failure to stabilize, *if brought under state law*, would constitute an action subject to Civil Code section 3333.2, i.e., an "action for injury against a health care provider based on professional negligence." We conclude that it would.

The cap on damages under Civil Code section 3333.2 applies to injuries "based on professional negligence," i.e.,

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on malpractice claims. (*Power*, supra, 42 F.3d at p. 866.)

medical treatment falling below the professional standard of care. As discussed, although it is not identical to a state malpractice claim because it includes additional requirements, an EMTALA claim for failure to stabilize is "based on professional negligence." A plaintiff must prove that the hospital did not, within its available staff and facilities, provide a patient known to be suffering from an emergency medical condition with medical treatment necessary to assure, within reasonable medical probability, that no deterioration of the condition would likely occur. The standard of "reasonable medical probability" is an objective one, inextricably interwoven with the professional standard for rendering medical treatment.

To be sure, every claim for professional negligence does not also constitute an EMTALA claim for failure to stabilize. A claim under EMTALA also requires proof that the hospital actually determined that the patient was suffering from an emergency medical condition and a hospital must provide required treatment only to stabilize a patient, i.e., to assure, within its capability, "no material deterioration of the condition" upon transfer or discharge. But an EMTALA claim based on failure to provide medically reasonable treatment to stabilize a patient would, if brought under state law, constitute a claim of "professional negligence" as defined by Civil Code section 3333.2. The EMTALA claim for failure to stabilize has additional, but no inconsistent, elements. Thus, the medical causation proof required to establish an EMTALA claim that a hospital failed to provide medical treatment to assure, within reasonable medical probability, that the patient's condition would not materially deteriorate is the same as hat which would be required to prove "a negligent act or omission to act by a health care provider . . . which . . . is the proximate cause of personal

injury or wrongful death." (Civ. Code, § 3333.2, subd. (c)(2).) The trier of fact must, under EMTALA as in a medical negligence claim, consider the prevailing medical standards and relevant expert medical testimony to determine whether material deterioration of the patient's condition was reasonably likely to occur.

Plaintiff urges that we should be guided by the federal district court in *Jackson v. East Bay Hosp., supra*, 980 F.Supp. at page 1348, which held that MICRA's cap on damages is inapplicable to EMTALA claims. We find the holding in *Jackson* unpersuasive. It relies on the erroneous premise that EMTALA claims "do not rest on any proof that the hospital was negligent or that the hospital failed to . . . provide adequate treatment." (*Ibid*) Moreover, it incorrectly asserts that EMTALA makes hospitals "strictly liable" and requires proof of the hospital's *intentional* refusal of care: "EMTALA creates a separate cause of action which makes hospitals strictly liable for refusing 'essential emergency care because of a patient's inability to pay.' " (*Ibid*) As discussed, EMTALA requires hospitals, within the staff and facilities available, to adhere to a certain level of professional care in treating patients who have been determined to have an emergency medical condition. It is not a strict liability statute. Rater, a stabilization claim under EMTALA is based on whether the hospital, within the staff and facilities available to it, provided medical treatment necessary to assure "within medical probability" that no material deterioration of a patient's condition would occur during transfer to another facility. Strict liability, by contrast, would automatically impose responsibility for an injury to the patient, regardless of the treatment given. Nor does EMTALA require proof of a hospital's intentional refusal of care, e.g., based on a patient's inability to pay or other bad faith motive. (See *Roberts v.*

Galen of Virginia, Inc., supra, __ U.S. at p. __ [119 S.Ct. at p. 687] [improper motive not required to establish a failure to stabilize under EMTALA].)[8]

The County urges that the cap on damages under Civil Code section 3333.2 should be extended to apply not only in cases of "professional negligence," but, more broadly, whenever the injury for which damages are sought is *directly related* to the professional services rendered by a health care provider. In support of that proposition, it cites our holding in *Central Pathology* that Code of Civil Procedure section

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[8]For these reasons, too, we reject plaintiff's contention that this matter is a so-called "hybrid" action, i.e., one involving both negligence claims subject to MICRA and "non-negligence" claims (i.e., the EMTALA claims) which are not. Thus, we are not persuaded that it is analogous to *Flores v. Natividad Medical Center* (1987) 192 Cal.App.3d 1106, which involved both negligence claims against individual physicians and a claim under Government Code section 845.6 based on the failure by state employees, some of whom were physicians, to summon medical care. *Flores* held that MICRA did not apply to the failure-to-summon claim because "the true nature of the action against the State" was not "one for professional negligence" simply because "fortuitously, the employees who failed to summon assistance were doctors"; nor was the state operating as a "health care provider" as defined in MICRA. (192 Cal.App.3d at pp. 1116-1117.) In this matter, by contrast, we are persuaded that the stabilization claim under EMTALA i indeed "based on professional negligence" for the reasons discussed in the text; nor is there any dispute that the County was a "health care provider" as defined by MICRA. (Civ. Code, § 3333.2, subd. (c)(1).)

425.13, a non-MICRA provision regarding the availability of punitive damages against a health care provider, was not "limited to causes of action alleging professional negligence." (*Central Pathology, supra*, 3 Cal.4th at p. 188.)

The Court of Appeal, adopting the approach urged by the County, extended the broad interpretation of the phrase "arising under professional negligence" in *Central Pathology* to all MICRA provisions, including the damages cap under Civil Code section 3333.2. It concluded that because the County's failure to stabilize Mychelle was "directly related" to the rendering of medical services, any damages under EMTALA were limited to $250,000.

We have not previously held that MICRA applies to intentional torts. Nor does *Central Pathology*, which involved a non-MICRA provision, so hold. As explained in our recent decision in *Delaney v. Baker* (S067060 1999) 20 Cal.4th 23, 40, *Central Pathology* did not did not purport to define the meaning of the term "professional negligence" as used in MICRA. "To claim that the *Central Pathology* definition extended beyond Code of Civil Procedure section 425.13(a) is to ignore the limitations that this court put on its own opinion." (*Delaney v. Baker, supra*, 20 Cal.4th at p. 40 [concluding that a cause of action for "reckless neglect" under the Elder Abuse and Dependent Adults Civil Protection Act, Welf. & Inst. Code, § 15600 et seq., is distinct from a cause of action "based on professional negligence" within the meaning of § 15657.2].) Rather, *Central Pathology* emphasized that the scope and meaning of the phrases "arising from professional negligence" and "based on professional negligence" could vary depending upon the legislative history and "the purpose underlying each of the individual statutes." (*Central Pathology, supra*, 3 Cal.4th at

p. 192, citing *Waters v. Bourhis* (1985) 40 Cal.3d 424.)[9] Because we decide this question on the different grounds discussed, we need not, and do not, adopt the Court of Appeal's rationale. Similarly, we need not, and do not, adopt the County's suggestion that the scope of MICRA should be viewed expansively as necessarily limiting *all* awards of noneconomic damages against a hospital for violations of EMTALA, including claims that do not involve conduct constituting "professional negligence." As discussed, the court's task in determining whether Civil Code section 3333.2 applies to a particular kind of EMTALA claim, such as a claim for failure to stabilize, properly involves examining the legal theory underlying the particular claim and the nature of the conduct challenged to determine whether, under California law, it would constitute "professional negligence"

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[9] In *Waters*, the plaintiff brought claims against her psychiatrist for sexual misconduct, based on theories of professional negligence and intentional tort. (*Waters v. Bourhis, supra*, 40 Cal.3d at pp. 433, 437.) We observed that the intentional tort claim was "of course, . . . not subject to . . . the $250,000 limit on noneconomic damages." (at p. 437; see also *Noble v. Superior Court* (1987) 191 Cal.App.3d 1189, 1190 [concluding, based on legislative history, that tolling provisions under MICRA "apply only to negligence causes of action [against a health care provider] and not to those based upon intentional torts"]; *Selected 1975 California Legislation* (1976) 7 Pacific L.J. 544, 557 ["[I]t seems notable that the legislature chose to specifically regulate [under MICRA] only those actions brought upon a theory of 'professional negligence' . . . . Hence, a 'malpractice' action brought on a . . . non-negligence theory would apparently be without the ambit of this legislation."].)

subject to Civil Code section 3333.2.

IV

For the foregoing reasons, we conclude that damages awarded to Barris under EMTALA were properly subject to reduction pursuant to Civil Code section 3333.2, which imposes a cap of $250,000 on the liability of a health care provider for noneconomic damages in an action based on professional negligence. Accordingly, we affirm the judgment of the Court of Appeal.

MOSK, J.

WE CONCUR: **GEORGE, C. J.**
KENNARD, J.
WERDEGAR, J.
BROWN, J.

BARRIS v. COUNTY OF LOS ANGELES
S067733

CONCURRING OPINION BY BAXTER, J.

The question here is whether the $250,000 limit on noneconomic damages under California's Medical Injury Compensation Reform Act (MICRA) (Civ. Code, § 3333.2) applies to a cause of action for failure to stabilize an emergency medical condition in violation of the federal Emergency Medical Treatment and Active Labor Act (EMTALA) (42 U.S.C. § 1395dd(b)). The majority answer the question in the affirmative because "[t]he trier of fact must, under EMTALA as in a medical negligence claim, consider the prevailing medical standards and relevant expert medical testimony to determine whether material deterioration of the patient's condition was reasonably likely to occur." (Maj. opn., *ante*, at p. 15.) While I also conclude that MICRA is applicable to plaintiff's EMTALA action, I do so on a different basis.

EMTALA imposes two limited duties of care upon hospitals that have both a Medicare provider agreement and an emergency department. First, if any individual comes to the emergency department requesting examination or treatment, the hospital "must provide for an appropriate medical screening examination within the capability of the hospital's emergency department . . . to determine whether or not an emergency medical condition . . . exists."[1] (42 U.S.C.

---

[1] As the majority note, most federal courts interpret the statutory phrase, "appropriate medical screening," to refer

§ 1395dd(a).) Second, as relevant here, if the hospital "determines that the individual has an emergency medical condition," it must provide, "within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition."[2] (*Id.*, § 1395dd(b)(1)(A).) Recognizing that personal injury may result directly from a hospital's failure to provide such care, Congress authorized the filing of civil actions for the recovery of damages subject to state law limitations on damages: "Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement [under EMTALA] may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate." (42 U.S.C. § 1395dd(d)(2)(A).)

In California, MICRA places a $250,000 limit on the ability of an injured plaintiff to recover damages for noneconomic losses "[i]n any action for injury against a health care provider based on professional negligence." (Civ. Code, § 3333.2, subds. (a), (b).) For purposes of MICRA, "'[p]rofessional negligence' means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided such

---

to *uniform* medical screening. (Maj. opn., *ante*, at p. 10, fn. 4.)

[2] If the individual has an emergency medical condition which has not been stabilized, the hospital may not transfer the individual unless other statutory criteria are fulfilled. (42 U.S.C. § 1395dd(b)(1)(B).)

services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." (Civ. Code, § 3333.2, subd. (c)(2).)

In my view, a hospital's demonstrated failure to act in accordance with EMTALA is, in and of itself, "a negligent . . . omission to act by a health care provider in the rendering of professional services" under the MICRA definition of professional negligence. (Civ. Code, § 3333.2, subd. (c)(2).) As I see it, any injury action based on a hospital's noncompliance with EMTALA's medical screening requirement or its provision for medically necessary stabilization treatment within the hospital's particular capabilities is an action based on professional negligence within the contemplation of MICRA.

Unlike the majority, then, I conclude, as a general matter, that any action against a hospital for a violation of EMTALA's duty of care provisions qualifies as an action based on professional negligence subject to MICRA, without regard to whether the particular claim entails consideration of the prevailing medical standards of care generally associated with a malpractice action. (Cf. *Power v. Arlington Hosp. Ass'n* (4th Cir. 1994) 42 F.3d 851, 861 [concluding that an EMTALA claim based on alleged disparate medical screening by a hospital was subject to Virginia's cap on medical malpractice damages even though the claim did not allege a breach of the prevailing standard of care].)

BAXTER, J.

I CONCUR:

CHIN, J.

APPENDIX B

ORIGINAL FILED
JUNE 20, 1996
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAWNELLE BARRIS, etc.,	)	CASE NO. TC 007065
	)	
Plaintiff,	)	**JUDGMENT ON**
v.	)	**SPECIAL VERDICT**
COUNTY OF LOS ANGELES; et al.,	)	**OF JURY**
	)	
Defendants.	)	
	)	

This case came on regularly for trial on November 14, 1995, in Department "B" of the Los Angeles Superior Court, South Central District, located at 200 W. Compton Boulevard, Compton, California 90220, before the Honorable Victoria Chavez, Judge Presiding. Kenneth M. Sigelman and Penelope A. Phillips of Kenneth M. Sigelman & Associates appeared as attorneys for plaintiff Dawnelle Barris. Karen

Travis of Veatch, Carlson, Grogan & Nelson appeared as attorney for defendants County of Los Angeles and T. Dang, M.D. Eva Halbreich of Pivo & Halbreich appeared as attorney for defendants Kaiser Foundation Health Plan, Inc., Southern California Permanente Medical Group, Kaiser Foundation Hospitals, Inc. and Brian Thompson, M.D.

A jury of twelve persons was regularly empaneled and sworn to try the action. Witnesses for both plaintiff and defendants were sworn and examined. After hearing the evidence, arguments of attorneys, and instructions of the Court, the jury members retired to consider their verdict, and subsequently returned to the Court, and, being called, answered to their names and rendered their verdict in writing in words and figures as follows:

Question No. 1: Were any of the defendants negligent in the medical care and treatment of Mychelle Williams?

Answer "yes" or "no" after the name of each defendant.

	YES	NO
Answer: Defendant T. Dang, M.D. and defendant County of Los Angeles	X	_____
Answer: Defendant Brian Thompson, M.D. and defendants Kaiser Foundation Health Plan and Southern California Permanente Medical Group	X	_____

If you answer Question No. 1 "no" as to each defendant, proceed to question No. 3. If you answer Question No. 1 "yes" as to any defendant, then answer Question No. 2 as to such defendant.

Question No. 2: As to each defendant that you answered "yes" in response to Question No. 1, was such negligence a cause of death of Mychelle Williams?

Answer "yes" or "no" after the name of each defendant.

	YES	NO
Answer: Defendant: Trach Dang, M.D. and defendant County of Los Angeles	X	_____
Answer: Defendant Brian Thompson, M.D. and defendants Kaiser Foundation Health Plan and Southern California Permanente Medical Group	X	_____

Proceed to the next question.

Question No. 3: Did the defendant County of Los Angeles violate the Emergency Medical Treatment and Active Labor Act?

Answer "yes" or "no"

Answer: YES

If you answer Question No. 3 "no" and have answered either Questions No. 1 or No. 2 "no" as to each defendant, sign and return this verdict form.

If you answer Question No. 3 "no" and have answered "yes" as to any defendant in Question No. 2, proceed to Question No. 4.

If you answer Question No. 3 "yes" proceed to Question No. 4.

Question No. 4: Was violation of the Emergency Medical Treatment and Active Labor Act by defendant County of Los Angeles a cause of death of Mychelle Williams?

Answer "yes" or "no"

Answer: YES

If you answer Question No. 4 "no," and have answered either Questions No. 1 or No. 2 "no" as to each defendant, sign and return this verdict form.

If you answer Question No. 3 "no" and have answered "yes" as to any defendant in Question No. 2, proceed to Question No. 5.

If you answer Question No. 4 "yes," proceed to the next question.

Question No. 5: What amount of damage, if any, do you find was sustained by plaintiff Dawnelle Barris for the

loss of love, companionship, comfort, affection, society, solace or moral support arising out of the events of May 6, 1993?

Answer: $ 1,350,000.00

Question No. 6: What amount of damage, if any, do you find was sustained by plaintiff Dawnelle Barris for expenses incurred for funeral services and burial of decedent's body arising out of the events of May 6, 1993?

Answer: $ 3,000.00

Question No. 7: Assuming that 100% represents the total negligence which was the cause of the decedent's death, what percentage of this 100% is due to the negligence of Trach Dang, M.D. and Brian Thompson, M.D.?

Answer: Defendant: T. Dang, M.D. and
75 %
defendant, County of Los Angeles

Answer: Defendant Brian Thompson, M.D. and
25 %
defendants Kaiser Foundation Health Plan and Southern California Permanente Medical Group

TOTAL: 100%

DATED: December 11, 1995

JEANETTE C. HOLLOWAY
FOREPERSON

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That plaintiff Dawnelle Barris have judgment, jointly and severally, against defendants County of Los Angeles, Trach Dang, M.D., Kaiser Foundation Health Plan, Inc., Southern California Permanente Medical Group, and Brian Thompson, M.D. for economic damages in the sum of $3,000.00, with interest thereon at the rate of ten percent per annum from the date of entry of this judgment, and

That plaintiff Dawnelle Barris further have judgment for non-economic damages in the total amount of $250,000.00 pursuant to the provisions of Civil Code Section 3333.2, which the Court has ruled is applicable to both Plaintiff's First Cause of Action for medical negligence and Plaintiff's Second Cause of Action for Violation of Title 42, United States Code Section 1395dd, as follows:

1) Against defendant County of Los Angeles in the sum of $250,000.00, with interest thereon at the rate of ten percent per annum from the date of entry of this judgment;

2) Of said total amount of $250,000.00, plaintiff Dawnelle Barris shall have judgment against defendants County of Los Angeles and Trach Dang, M.D. jointly and severally in the sum of $187,500.00, with interest thereon at the rate of ten percent per annum from the date of entry of this judgment;

3) Of said total amount of $250,000.00, plaintiff Dawnelle Barris shall have judgment against defendants County of Los Angeles, Kaiser Foundation Health Plan, Inc., Southern California Permanente Medical Group, and Brian Thompson, M.D. jointly and severally in the sum of $62,500.00, with interest thereon at the rate of ten percent per annum from the date of entry of this judgment, and

That plaintiff Dawnelle Barris recover from defendants County of Los Angeles, Trach Dang, M.D., Kaiser Foundation Health Plan, Inc., Southern California Permanente Medical Group, and Brian Thompson, M.D., jointly and severally, costs and disbursements pursuant to Code of Civil Procedure sections 1032 and 1033.5.

DATED: JUNE 20, 1996

"s/-------"
VICTORIA M. CHAVEZ
JUDGE OF THE SUPERIOR COURT

APPENDIX C

ORIGINAL FILED
MAR 22, 1996
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAWNELLE BARRIS, etc., et al, Plaintiffs, vs. COUNTY OF LOS ANGELES, etc., et al., Defendants.	))))))))))	No. TC 007065 RULING ON DEFENDANTS' MOTION IN LIMINE TO LIMIT PLAINTIFF'S DAMAGES AND RECOVERY UNDER MICRA

Defendants LOS ANGELES COUNTY (LACO) and T. Dang, M.D. (Dr. Dang), Motions in Limine to Limit Plaintiff's Damages under MICRA were fully briefed and argued by counsel for said defendants, Karen J. Travis and William G. Lieb. Plaintiff, Dawnelle Barris, opposed defendants motions through her counsel, Kenneth M. Sigelman.

The matter being submitted to the Court and after consideration of the argument and points and authorities, the Court FINDS as follows:

That the plaintiff pled and proved both a

professional negligence cause of action as well as a separate Federal statutory cause of action against defendants LACO and Dr. Dang.

That the Supreme Court, in *Central Pathology Service Medical Clinic, Inc., v. Superior Court* (1992) 3 Cal.4th 181 extended the applicability of MICRA (Civil Code Section 3333.2, et seq.) beyond professional negligence to include intentional torts which are "...directly related to the professional services provided by a health care provider acting in its capacity as such..." (See *Central Pathology, supra*, at 191.)

That the U.S. Court of Appeals, Fourth District held in *Power v. Arlington Hospital Association*, 42 F.d 851 (4th Circuit, 1994) that the Virginia State law which imposed a limit on recoverable damages in an action for malpractice applied to an action for damages brought under the authority of 42 U.S.C. § 1395dd (EMTALA).

That the above two cases, when read together, provide the law that applies to this case.

WHEREFORE, the court finds that the MICRA limits apply to the EMTALA cause of action and that the plaintiff is thus limited in her recovery of general damages against the defendants LACO and Dr. Dang.

DATED: March _____, 1996.

/s/
VICTORIA M. CHAVEZ
Judge of the Superior Court

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is: 210 West Temple Street, Los Angeles, California 90012. On _____, 19 _____, I served the within **RULING ON DEFENDANT'S MOTION IN LIMINE TO LIMIT PLAINTIFF'S DAMAGES AND RECOVERY UNDER MICRA.** On the Parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepared, in the United States mail at Los Angeles, California, addressed as follows:

KENNETH M. SIGELMAN, Esq.
KENNETH M. SIGELMAN & ASSOCIATES
1901 FIRST AVENUE, 2nd Floor
SAN DIEGO, CALIFORNIA 92101

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LOS ANGELES, CALIFORNIA 90010

EVA S. HALBREICH, Esq.
PIVO & HALBREICH
1920 MAIN STREET, SUITE 800
IRVINE, CALIFORNIA 92714

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on March 22, 1996 at Los Angeles California.

S. Ferrell, Deputy s/
(Signature)

APPENDIX D
STATUTES INVOLVED

42 U.S.C.A. 1395dd
The Emergency Medical Treatment and Active Labor Act

Section 1395dd is lengthy. The portions relevant to this petition provide:

(b) Necessary Stabilizing Treatment for Emergency Medical Conditions and Labor

(1) In general:

If any individual...comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide...

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition...

(c) Restricting Transfer Until Individual Stabilized

(1) Rule: If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual...

(d) (2) Civil Enforcement

(A) Personal Harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located. . .

(e) Definitions

In this section:

(1) The term "emergency medical condition" means -

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (i) placing the health of the individual . . . in serious jeopardy . . .

(3) (A) The term "to stabilize" means, with respect to an emergency medical condition described in paragraph (1)(A) , to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility. .

(B) The term "stabilized" means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility . . .

California Civil Code §3333.2

California Civil Code §3333.2 provides, in pertinent part:

> (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.
> (b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars ($250,000).
> (c) For the purposes of this section: . . .
> (2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

Supreme Court, U.S.
FILED
JUL 19 1999
OFFICE OF THE CLERK

No. 99-11

In The

Supreme Court of the United States

DAWNELLE BARRIS,

Petitioner,

v.

COUNTY OF LOS ANGELES,

Respondent.

On Petition For A Writ Of Certiorari To The California Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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13pp

QUESTION PRESENTED

In determining what damages are available for a violation of the Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd, et seq.), which incorporates substantive state law on damages, did the California Supreme Court correctly determine that a claim against a hospital for failure to stabilize a patient prior to transfer is "based on professional negligence" within the meaning of California Civil Code § 3333.2.

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JURISDICTION

Respondent County of Los Angeles ("County") does not contest this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The County incorporates by reference the description of the substantive and procedural facts of this action set forth in the published opinion of the California Supreme Court. Petitioner's Appendix ("Pet. App.") A.

REASONS FOR DENYING THE WRIT

This writ should be denied because (1) the question presented is one of state law, not federal, in that the damages recoverable for violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA") is a question Congress expressly left to the states, (2) the California Supreme Court's decision to apply California Civil Code § 3333.2 to limit petitioner's recovery does not rest on a misinterpretation of EMTALA and in no way conflicts with federal authorities regarding standards of liability, and (3) rather than nullifying EMTALA in California, the decision is consistent with Congressional intent.

I

THE CALIFORNIA SUPREME COURT FOLLOWED CONGRESS'S DIRECTIVE TO APPLY STATE LAW WHEN IT HELD THAT CALIFORNIA CIVIL CODE § 3333.2 APPLIES TO A FAILURE TO STABILIZE CLAIM UNDER EMTALA.

Congress directed that individuals who prove injury resulting from a violation of EMTALA may "obtain those damages available for personal injury under the law of the State in which the hospital is located." Pet. App. D-2; 42 U.S.C. § 1395dd(d)(2)(A). Thus, the California Supreme Court was called upon in this action to decide whether California Civil Code § 3333.2, which limits noneconomic damages for claims against health care providers "based on professional negligence," applies to a recovery under EMTALA for injury caused by the failure to stabilize a patient prior to transferring her to another hospital. Pet. App. A-12, D-3. The court held that damages awarded on a failure to stabilize claim "were properly subject to reduction pursuant to Civil Code section 3333.2, which imposes a cap of $250,000 on the liability of a health care provider for noneconomic damages in an action based on professional negligence." Pet. App. A-21. In other words, California Civil Code § 3333.2 delineates the non-economic damages "available" in California on a failure to stabilize claim. The California Supreme Court's decision, therefore, presents no federal issue warranting this Court's review, and the petition for a writ of certiorari should be denied.

II

THE CALIFORNIA SUPREME COURT DID NOT MISINTERPRET EMTALA FOR PURPOSES OF DETERMINING WHETHER CIVIL CODE § 3333.2 APPLIES, AND ITS DECISION DOES NOT CONFLICT WITH FEDERAL APPELLATE DECISIONS REGARDING STANDARDS OF LIABILITY.

Petitioner contends the California Supreme Court's holding rests on a misinterpretation of EMTALA. Specifically, she faults the California Supreme Court for equating a failure to stabilize claim under EMTALA with a claim for medical negligence under state law, when numerous federal courts construing EMTALA have emphasized that EMTALA is *not* a federal malpractice statute. Petition For Writ Of Certiorari ("Pet.") 12-17.

Petitioner's contention does not withstand scrutiny. A holding that a failure to stabilize claim is "based on professional negligence" within the meaning of Civil Code § 3333.2 for the limited purpose of determining what *damages* may be recovered does not trespass into federal territory where the standard of *liability* is determined. The many authorities petitioner cites as conflicting with the California Supreme Court's decision in this case emphasize that EMTALA is not a federal malpractice statute in order to distinguish between common law and statutory standards of proof with respect to liability. "Something more than or different from negligence must be shown, but what is that 'something'?" the Eighth Circuit asked in *Summers v. Baptist Med. Ctr. of Arkadelphia*, 91 F.3d 1132, 1138 (8th Cir. 1996). The answer (with respect to a failure to stabilize claim) is that a plaintiff is required to prove, among other things, "actual

knowledge of the individual's unstabilized emergency medical condition," i.e., to satisfy something more than the "should have known" negligence standard. *Id.* at 1140; *see also, e.g., Vickers v. Nash Gen. Hosp., Inc.*, 78 F.3d 139, 145 (4th Cir. 1996) (EMTALA obligates hospitals only "to stabilize conditions they actually detect . . . [and] does not hold hospitals accountable for failing to stabilize conditions of which they should have been aware"); *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1259 (9th Cir. 1995) (no obligation to stabilize undetected suicidal tendencies).

In line with the federal authorities cited by petitioner, the California Supreme Court clearly recognized that "something more than" negligence must be shown to prove a failure to stabilize claim under EMTALA and that an EMTALA claim is "not identical to a state malpractice claim." Pet. App. A-16.

> Proof of professional negligence does not suffice as proof of violation of EMTALA. EMTALA differs from a traditional state medical malpractice claim principally because it also requires *actual knowledge* by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as ~~can be~~ *provided within the staff and facilities available at the hospital*. EMTALA thus imposes liability for failure to stabilize a patient only if a emergency medical condition is actually discovered, rather than for negligent failure to discover and treat such a condition. In addition, EMTALA imposes only a limited duty of medical treatment: a hospital need provide only sufficient care, within its

> capability, to stabilize the patient, not necessarily to improve or cure his or her condition. Once the medical condition is stabilized, the hospital may discharge or transfer the patient without limitation.

Pet. App. A-10 (emphasis in original).

However, the California Supreme Court found sufficient overlap between requirements of proof under EMTALA and a cause of action for professional negligence under state law to bring the EMTALA claim within the scope of Civil Code § 3333.2 for the purpose of determining what damages a plaintiff could recover for an EMTALA violation. As the court noted, under the terms of EMTALA, to prove a failure to stabilize claim a plaintiff must prove that the hospital, within its capabilities, did not provide the necessary stabilizing treatment for transfer or discharge. Pet. App. A-9, D-1; 42 U.S.C. § 1395dd(b)(1)(A). EMTALA defines "to stabilize" as "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility." Pet. App. D-2; 42 U.S.C. § 1395dd(e)(3)(A). On the basis of this definition, the California Supreme Court determined, "The standard of 'reasonable medical probability' is an objective one, inextricably interwoven with the professional standard for rendering medical treatment." Pet. App. A-16. "[T]o determine whether material deterioration of the patient's condition was reasonably likely to occur," i.e., whether the plaintiff has proved the hospital did not provide the necessary stabilizing treatment within its capabilities and

so caused death or injury, a trier of fact would necessarily have to resort to the testimony of medical experts and to consider prevailing medical standards (as it did in this case). Pet App. A-4, A-17; *see also, Burditt v. U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1369 (5th Cir. 1991) (stabilization under EMTALA requires "treatment that medical experts agree would prevent the threatening and severe consequences [of an emergency medical condition] while [the patient] . . . was in transit"). Thus, the California Supreme Court concluded, "a claim under EMTALA based on the failure to stabilize, *if brought under state law*, would constitute an action subject to Civil Code section 3333.2, i.e., an 'action for injury against a health care provider based on professional negligence.' " Pet. App. A-15.

There was no error in the California Supreme Court's reading of EMTALA for purposes of determining whether California Civil Code § 3333.2 applies. Not surprisingly, EMTALA expressly contemplates negligent violations of its provisions by hospitals and physicians. Respondent's Appendix ("RA") A-1; 42 U.S.C. § 1395dd(d)(1)(A) and (B) (hospitals and physicians who "negligently violate[ ]" requirements are subject to civil penalties). The purported misinterpretation of EMTALA which petitioner asserts as grounds for certiorari did not occur to precipitate a conflict in the law. The petition for a writ of certiorari should therefore be denied.

III

RATHER THAN NULLIFYING EMTALA IN CALIFORNIA, THE HOLDING OF THE CALIFORNIA SUPREME COURT IS CONSISTENT WITH CONGRESS'S INTENT IN ENACTING EMTALA.

Petitioner complains that the California Supreme Court's holding effectively nullifies EMTALA in California because a plaintiff is entitled to "no additional or different relief than is obtainable in connection with a medical negligence claim." Pet. 18. In her view, with the cap on noneconomic damages, California plaintiffs will have no incentive to bring a failure to stabilize claim, and Congress's purpose of deterring the proscribed conduct will be defeated. *Id.* at 18-19.

As a threshold matter, the enforcement of EMTALA, including its stabilization requirement, does not stand or fall on whether individual litigants deem it financially worthwhile to sue under its provisions, since violations of EMTALA may also result in civil penalties and exclusion from participation in federal and state health care programs. RA A-1; 42 U.S.C. § 1395dd(d)(1)(A) and (B).

More significantly, the fact that a plaintiff may not be able to obtain "additional or different relief" on her federal claim than she can on a state medical negligence claim is consistent with what Congress intended when it directed that state law be controlling with respect to damages. Agreeing with the Fourth Circuit's decision in *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851 (4th Cir. 1994), the California Supreme Court was "persuaded that Congress's choice of the term 'personal injury' was intended to be inclusive, i.e., to incorporate not only any *general*

provisions for personal injury damages, but also any *specific* provisions, such as limits applicable to malpractice damages." Pet. App. A-12-A-13 (citation omitted). As the court explained, "[T]he apparent intent of Congress was to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what limits are appropriate in personal injury actions against health care providers. Thus, the legislative history suggests that in drafting EMTALA to incorporate state law limits on personal injury damages, Congress was specifically responding to concern 'regarding "the potential impact of these enforcement provisions on the current medical malpractice crisis" ' (*Power, supra,* 42 F.3d at p. 862, quoting H.R. Rep. No. 99-241, 1st Sess., pt. 3, at p. 6 (1986).)." Pet. App. A-13. In other words, the California Supreme Court was rightly in accord with the Fourth Circuit's view that " 'Congress apparently wished to preserve state-enacted ceilings on the amount of damages that could be recovered in EMTALA'." *Id.*

In sum, petitioner's effort to convince this Court that her petition presents an important question requiring resolution should be rejected because the holding of the California Supreme Court in this case neither nullifies EMTALA nor thwarts Congressional intent. The petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

STATUTES INVOLVED

42 U.S.C. § 1395dd

The relevant portions of § 1395dd are in Appendix D of the petition, except for the following here included for this Court's convenience.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation . . .

(B) . . . any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, . . . is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. . . .